

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to in Division 4, Chapter 4, Subchapter 5, amend Article 3 and Sections 3651(c)(1), 3655(c)(1), 3658 and 3662 of the regulations in Title 3 of the California Code of Regulations pertaining to Pierce's Disease Control Program.

A public hearing concerning the proposed action will be held on Tuesday, September 9, 2003 at 10:00 a.m., at the Tulare County Department of Agriculture, Agriculture Building, 2500 Burrel Avenue Visalia, California.

A representative of the Department of Food and Agriculture will preside the hearing. Any interested person, or his or her duly authorized representative, may appear and be heard. Persons who speak are requested to register prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9:00 a.m. to 10:00 a.m. Those registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded such opportunity after the registered persons have been heard. The hearing will continue until there are no persons present to address the Department or until 1:00 p.m.

The Department is specifically requesting that in consideration of others, all persons attending the hearing refrain from wearing perfumes, colognes, or other scented personal care products.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Any person, or his or her duly authorized representative, who does not wish to speak at the hearing may present written statements to the presiding officer at the hearing, or may submit written statements on or before September 8, 2003 to the agency officer named below. Following the public hearing and the written comment period, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

#### INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322). Sections 6045 through 6047 (Food and Agricultural Code) establish that *Xylella fastidiosa*, Pierce's disease, and its vectors present a clear and present danger to California's agricultural industry; establish a Pierce's Disease Control Program and Management Account with program funding appropriations; and establish authority for regulations to effectuate the intent of these statutes.

The proposed amendments of Article 3 and Sections 3651(c)(1) and 3655(c)(1) are changes without regulatory effect. Section 3658 establishes the list of plants that are hosts of the glassy-winged sharpshooter (GWSS),

*Homalodisca coagulata*, and that have to meet the requirements for standards of movement (Section 3659) and certification (Section 3660). The Department proposes to amend Section 3658 to add six new hosts: *Caryota* spp. (fishtail palm), *Cercidium* spp. (palo verde), *Chionanthus* spp. (fringe tree), *Leucospermum* spp. (pincushion), *Sarcococca* spp. (sweet box) and *Schlumbergera* spp. (Christmas cactus). The effect of this proposed amendment is to provide authority for the State to specifically regulate the movement of these hosts.

Section 3662 establishes the standards for movement of bulk citrus. The Department proposes to amend Section 3662 to remove the sunset clause that would become effective October 1, 2003. If the sunset clause were not removed, the language will become less specific to provide for general performance-based standards and provide that bulk citrus shall be harvested, handled, or treated in a manner approved by the Department to eliminate all live vectors or that bulk citrus shall originate from a non-infested grove as determined by surveys, including trapping and visual, approved by the Department to detect the presence of vectors and the citrus fruit are monitored during harvest. The effect of this amendment is to retain the current specific standards for movement of bulk citrus to ensure that the shippers of bulk citrus can easily understand the requirements necessary to comply with the regulations to prevent the spread of the GWSS.

The intent of the regulations is to control Pierce's disease by preventing the artificial spread of the GWSS to non-infested areas to protect California's agricultural industry. There is no existing, comparable federal regulation or statute.

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Sections 3658 and 3662 do impose a mandate on local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from the Pierce's Disease Management Account established by the Legislature to combat Pierce's disease and its vectors. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by the Department of Food and Agriculture.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.

#### EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

#### NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action may have an adverse impact on some California businesses, including the ability of California businesses to compete with businesses in other states. These impacts would not be statewide and may only affect some of those businesses located within the GWSS infested

areas. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those businesses from costs or losses due to Pierce's disease or GWSS.

#### COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of the emergency adopted regulation on a representative private person or business may be significant. A representative person or business could incur average costs of approximately \$1,896 per year in reasonable compliance with the proposed action. The actual costs will vary with the type and size of the affected businesses.

#### ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### AUTHORITY

The Department amended Sections 3658 and 3662 pursuant to the authority vested by Sections 407 and 6047 of the Food and Agricultural Code of California.

#### REFERENCE

The Department amended Sections 3658 and 3662 to implement, interpret and make specific Section 6045 of the Food and Agricultural Code of California.

#### EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

#### CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-

316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). In his absence, you may contact Kris Peeples at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

#### INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

#### DEPARTMENT OF FOOD AND AGRICULTURE

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Date

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Deputy Secretary